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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/435,507	11/08/1999	ANTHONY V. CRUZ	0198	5322

7590

07/29/2002

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EXAMINER

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ART UNIT

PAPER NUMBER

3622

DATE MAILED: 07/29/2002

15

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 15

Application Number: 09/435,507

Filing Date: November 8, 1999

Appellant(s): Anthony V. Cruz

MAILED

JUL 29 2002

GROUP 3600

Roger S. Dybvig

For Appellant

EXAMINER ' S ANSWER

This is in response to the appeal brief filed June 20, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on June 28, 2002 has not been entered.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-16 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,590,475	ANDIS	1-1997
5,857,263	CHAN	1-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 U.S.C. § 102

Claims 1-5, 8-12, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Andis (5,590,475). Andis discloses an appliance comprising:

a portable electric appliance **19** having an elongate handle **25** and power switch **21** mounted on said handle, said power switch including an operating member which can be manually moved into a position to open said switch to deenergize the appliance (please see column 3 lines

17-35 which explicitly teaches the opening of the off-on switch **21** which also includes a movable switch member **45** to deenergize the appliance); and

a wall mount **17** comprising a one-piece, molded plastic body (the one-piece molded plastic is disclosed at column 1 line 35) having a front face **91** and a rear face (also **91**, the front and rear perspective occurs when the cradle is viewed from the side as in figures **3** and **5**), said front face having a switch-engaging surface portion **95** adapted to engage said switch operating member **21** (which includes the movable switch member **45**) to open said switch as said appliance is assembled onto said wall mount in the event an attempt is made to assemble said appliance on said wall mount when said power switch is closed and said appliance is, therefore, energized (again please see column 3 lines 17-35 and column 4 lines 5-24 which explicitly teach the opening of the switch to deenergize the appliance while particularly viewing figures **7** & **8** which show the switch-engaging surface portion adapted to engage said switch operating member to open said switch as said appliance is assembled onto said wall mount). Andis also shows the claimed clamped jaws (figure **2**) facing each other feature (figure **1**), the resilient projections **91** to pull the appliance handle **19** (figures **5** & **6**), the recessed handle housing wall mount (figures **1** & **2**), and the electrical appliance being a portable hair dryer (please see column 1 line 12).

Claim Rejections - 35 U.S.C. § 103

Claims 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andis in view of Chan (5,857,263). Andis discloses the claimed invention, as discussed above, except for the extending power cord and power cord slot and reel. Chan teaches that it is known to provide an extending power cord and power cord slot and reel as set forth at column 5, lines 28-40. It would have been obvious to one having ordinary skill in the art at the time the invention

was made to provide the extending power cord and power cord slot and reel, as taught by Chan in order to allow great user efficiency without the inconvenience of a dangling power cord during normal user operations.

(11) *Response to Argument*

The amendment filed June 28, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. The amendment has been placed in the application file but will not be entered for Office consideration. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the switching to a low/high speed, the surface portion mating, the U-shaped slots and slot portions, and the recesses along with the added reference characters to the accompanying drawings. The further amendments made under 37 CFR 116 do not comply with 37 CFR 1.114 and would require further consideration by the Office, which is generally not permitted when prosecution on the merits of the application is closed. The requested amendments tend to further confuse the issues on appeal and do not clarify the claimed invention.

Appellant argues that the examiner has failed to determine the meanings of terms used in claim 1, has provided examiner's own definitions, and twisted or stretched the teachings of primary reference Andis. In response to appellant's arguments, the Office must interpret the claims under the broadest reasonable interpretation. The examiner can not import impermissible subject matter by reading limitations of the specification into a claim to thereby narrow the scope

of the claim by implicitly adding disclosed limitations which have no express basis in the claim. (*In re Prater*, 415 F.2d 1993, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) and see also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). In this case, Andis teaches the independently claimed limitation of a wall mount including a front face having a switch engaging surface portion adapted to engage the switch operating member to open the switch as the appliance is assembled onto the wall mount and a rear face. It is impermissible for the examiner to import appellant's specification that the rear face faces toward the wall and the front face faces away from the wall thereby narrowing the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim. The rear facing wall mount and opposing front face is not expressly claimed and examiner has given the independently claimed front face and rear face the broadest reasonable interpretation. It is not believed that the examiner has failed to determine the meanings of terms used in claim 1, has provided examiner's own definitions, and twisted or stretched the teachings of primary reference Andis.

The dependently claimed clamp jaws cooperating projections and recesses is implicitly taught by figure 2 of Andis and expressly disclosed at column 4 lines 18-24. Again, the examiner has given the claimed clamp jaws the broadest reasonable interpretation since the surface 95 and cradle 91 of Andis perform the same function, using the same means, with the same result.

The projections resiliently cam against the leading edges of the recess, pulling the handle toward the wall mount so that the switch operating member is pressed against the front wall of the wall mount is implicitly taught by figures 1 and 3-8 and expressly disclosed at column 4 lines 5-65. The examiner has given the claimed projections the broadest reasonable interpretation since switch member 45 is cammed to the off position when engaged the surface 95 which performs the same function, using the same means, with the same result.

Appellant argues that the dependently claimed power cord is considered allowable. This assertion of allowability is not sufficient to overcome the rejection.

Appellant finally argues that the power cord reel housing is patentable because neither the primary reference Andis nor the secondary reference Chan teach that feature. Furthermore, in response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Examiner has carefully considered the prior art of record in light of appellants arguments, but remains of the opinion that the claimed invention is anticipated by the primary reference Andis and obviated by Andis in view of secondary reference Chan.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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